

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**JOSHUA DUANE BARNES,
TDCJ #1546645,**

Plaintiff,

v.

**RONALD GIVENS, SENIOR
WARDEN, CONNALLY UNIT; FRANK
STENGEL, ASSISTANT WARDEN,
CONNALLY UNIT; MARCUS
ROBINSON, MAJOR, CONNALLY
UNIT; BRYAN COLLIER, TDCJ
EXECUTIVE DIRECTOR; MIGUEL
MARTINEZ, TDCJ REGION IV
DIRECTOR; KATHRYN GAITAN,
TDCJ REGION IV ASSISTANT
DIRECTOR; AND AMBER JENKINS,
MAILROOM SUPERVISOR,
CONNALLY UNIT,¹**

Defendants.

CIVIL NO. SA-17-CV-01071-XR

DISMISSAL ORDER

Plaintiff Joshua Duane Barnes's ("Barnes") Civil Rights Complaint ("Complaint") pursuant to 42 U.S.C. § 1983 was dismissed without prejudice on October 29, 2019. (ECF Nos. 1, 27–28). Barnes timely filed a "Motion to Alter or Amend Judgment and Request for Leave to Amend Complaint." (ECF No. 29); *see* FED. R. CIV. P. 59. On December 2, 2019, the Court granted Barnes's motion, ordered its October 29, 2019 "Memorandum Opinion and Order Granting Defendants' Motion to Dismiss Plaintiff's Civil Rights Complaint" and accompanying "Final Judgment vacated, and ordered the case reopened. (ECF Nos. 27, 28, 30). In that same

¹ Rule 25(d) of the Federal Rules of Civil Procedure allows for the automatic substitution of an official's successor for an official sued in his official capacity. FED. R. CIV. P. 25(d). In this case, all of the defendants were sued in their official capacities. (ECF No. 1). Since the filing of the suit, several defendants were replaced by successors: (1) Phonso Rayford is the current Connally Unit warden, replacing Ronald Givens; (2) Marcus Robinson is the current Connally Unit Major, replacing Joe Castillo; (3) Miguel Martinez is the current Region IV TDCJ Director, replacing Joe Grimes; and (4) Kathryn Gaitan is the current Region IV TDCJ Assistant Director, replacing P. Chapa. *See id.*

order, the Court ordered Barnes to “file an amended complaint in this Court” on or before January 2, 2020. (ECF No. 30). Barnes was advised that if he failed to file an amended complaint as ordered, his action could be dismissed for failure to prosecute and failure to comply with the Order. (*Id.*); *see* FED. R. CIV. P. 41(b). To date, Barnes has not filed an amended complaint nor otherwise responded to this Court’s order.

IT IS THEREFORE ORDERED that Barnes’s section 1983 Complaint (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE** pursuant to FED. R. CIV. P. 41(b) for failure to prosecute and failure to comply with the Court’s Order requiring Barnes to file an amended complaint on or before January 2, 2020. (ECF No. 30) and for the reasons previously stated in this Court’s October 29, 2019 Memorandum Opinion and Order Granting Defendants’ Motion to Dismiss and Dismissing Plaintiff’s Civil Rights Complaint (ECF No 27) and accompanying Final Judgment (ECF No. 28).

SIGNED this 22nd day of January, 2020.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', with a stylized, looping initial 'X' and a horizontal line extending to the right.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE